

The Georgia Fair Lending Act Amended 3/7/2003

The Georgia Fair Lending Act (the Act) became effective on October 1, 2002, and was subsequently amended on March 7, 2003. The 2003 amendments address a variety of concerns and correct a number of unintended consequences of the original Act. Even with these amendments, the Act remains one of the toughest state or local high-cost home loan laws in the country.

The provisions of the amended Act apply to all “home loans” closed on or after March 7, 2003. The original Act applied to all home loans closed between October 1, 2002 and March 6, 2003. This brochure discusses some of the changes to the original Act that impact or modify the Department’s original brochure titled “**The Georgia Fair Lending Act**”.

The intent of the Act is to prohibit abusive mortgage lending practices. The Act imposes liability on loan brokers, loan servicers, and loan purchasers or assignees; however, the amended Act greatly limits assignee liability.

The Act is concerned with loans that are secured by a borrower’s principal dwelling located on real estate in Georgia. The Act places different restrictions on “High Cost Home Loans” and in general on all “Home Loans”. The category of “Covered Home Loans”, which were medium-cost home loans, was removed with the 2003 amendments to the Act.

The Act was drafted to provide borrowers with the ability to bring legal action against violators of the Act. Lenders can cure mistakes before the borrower contacts them and within 90 days after closing or after discovery of a bona fide error. However, once the borrower contacts the lender, they could be subject to damages if found guilty of violating the Act.

Home Loans

The Act covers all “home loans.” The Act does not distinguish among types of lenders. There are some types of mortgage-related loan products in Georgia that are not “home loans” and will not be subject to the Act.

The amended Act provides for additional exclusions to the definition of a “home loan” including: tax-advantage loans where personal property is used as the primary collateral but where the borrower’s home is also taken as collateral; loans to a consumer where because of a dragnet clause on the prior loan, the borrower’s home could be considered to be collateral (loan documents for the new loan do not include a mortgage, security deed or other instrument expressly securing the new loan); and, bridge loans.

The term "home loan" still includes all home purchase and home equity loans, and home equity lines of credit, so long as the principal amount does not exceed the Fannie Mae conforming loan size (\$322,700 as of January 2003).

A “home loan” is –

Secured by real estate in Georgia upon which there is located or is to be located:

A structure or structures, including a manufactured home, designed principally for 1-4 family occupancy AND occupied by the borrower as the borrower’s principal dwelling.

In addition to the new exclusions from the “home loan” definition mentioned above, the following exclusions in the original Act still apply:

Reverse mortgage loans; temporary financing for acquisition of land by the borrower and initial construction of a borrower’s dwelling thereon or the initial construction of a borrower’s dwelling on land owned by the borrower; OR business, agricultural or commercial purpose loans.

Some dwelling-secured loans, nevertheless, are excluded (either expressly under the Act or implicitly from the definition):

- Second or vacation homes (not used as borrower’s principal dwelling),
- Jumbo-type mortgage loans,
- Loans or retail installment sales obligations secured only by a manufactured housing unit and not by land where unit is attached,
- Commercial loans or investment property,
- Houseboat loans or RV loans (even if used as borrower’s principal dwelling).

Keeping in mind the definition of “home loan” under the Act, prohibitions and limitations are:

1. No financing of credit insurance premiums or debt cancellation coverage charges (whether or not insurance under applicable law), or any other life, accident, health or loss of income insurance (regardless of beneficiary). Monthly premiums or charges that are not added to the principal of the loan are not considered to be financed.
2. No creditor or servicer is permitted to encourage default on an existing loan or other debt pending closing a home loan that refinances the existing loan or debt.
3. Late payment fees are limited in Georgia “home loans.” The loan documents must authorize the late charge, and charges are limited to –
 - 5% of the amount of the late payment, which is past due 10 days or more, and
 - one late charge per a particular late payment.

NOTE: The amended Act adds that a lender may apply any payment made in the order of maturity to a prior period’s payment due even if the result is late payment charges accruing on subsequent payments due.

4. Loan servicing and payoff prohibitions imposed on creditors and servicers –

- No fee for payoff quote
- No fee for release upon prepayment

A creditor or servicer may charge a processing fee of up to \$10 if the creditor or servicer provides the payoff balance by facsimile OR if the information is provided upon request within 60 days of fulfillment of a previous request.

The lender or servicer must provide payoff balances within 5 business days after request.

Arbitration provisions in “home loan” documents may be void and unconscionable in Georgia under certain circumstances (Section 7-6A-7(g)).

High Cost Home Loans & “Flipping” –

A “High Cost Home Loan” is a home loan in which the loan terms meet or exceed one of the “thresholds.” The primary definition and thresholds for high cost home loans were not amended from the original Act.

“Thresholds” –

- Total points and fees (excluding not more than 2 “bona fide discount points”) exceed 5% of the total loan amount (if total loan amount is \$20,000 or more) or the lesser of 8% of the total loan amount or \$1,000 (if total loan amount is less than \$20,000),
- OR

- The “annual percentage rate” (APR) meets or exceeds that set out in Section 152 of the Home Ownership and Equity Protection Act of 1994 (HOEPA), Regulation Z Section 32 triggers.

Upon the effective date of the Act, the APR figures in Regulation Z Section 32 were 8% (for first mortgage loans) and 10% (for second mortgage loans) above comparable Treasury securities rates.

Section 7-6A-5 of the Act provides that “high cost loans” are subject to over 15 limitations and prohibited practices.

For high cost home loans “made, arranged or assigned” by someone selling home improvements to the dwelling of the borrower, the creditor is subject to all claims and defenses that may be asserted by the borrower against the seller or home improvement contractor, if a certificate of occupancy, inspection or completion is required by law and is not obtained.

Flipping

Amended Section 7-6A-4 of the Act provides that:

“No creditor may knowingly or intentionally engage in the unfair act or practice of ‘flipping’ a home loan.”

Under Section 4, “flipping” occurs when –

- (i) A “high cost home loan” is made to the borrower –
- (ii) That refinances an “existing home loan” –
- (iii) That was consummated within the prior 5 years –
- (iv) When the new loan does not provide “reasonable, tangible net benefit to the borrower considering all of the circumstances,” including, but not limited to:

The terms of both the new and refinanced loans; the cost of the new loan; and, the borrower’s circumstances.

The anti-flipping provision of the amended Act will apply only if the lender **“*knowingly or intentionally*”** engaged in flipping.

The amended Act also adds that home loan refinancing transactions of first mortgage loans originated by, purchased by, or assigned to the Georgia Housing and Finance Authority shall not be presumed to

be “flipping”. However, these loans will be subject to a normal flipping analysis.

Remedies and Enforcement

Any creditor who violates the Act, may be subject to legal action for –

- (a) actual damages, including consequential and incidental damages;
- (b) statutory damages equal to recovery of two times the interest paid under the law and forfeiture of interest;
- (c) punitive damages; and
- (d) costs and reasonable attorney fees.

Additional remedies include:

- equitable claims, including injunctions made easier by the statute;
- class actions; and
- special rescission rights of up to 5 years after consummation.

If a home loan violates the Act, any brokering of such home loan constitutes a violation of the Act.

A five-year statute of limitations now applies to violations of the amended Act. The Attorney General, District Attorneys in Georgia, the Georgia Department of Banking and Finance, and the Department of Insurance each have the statutory authority to pursue violators of the Act through their general regulatory powers and civil process. Any person who knowingly violates the Act is subject to criminal prosecution.

Other Provisions of the Amended Act

The amended Act adds a new provision to exempt state banks, trust companies, savings associations, and credit unions, and their respective subsidiaries, to the same extent that a federally-chartered bank, trust company, savings association or credit union can claim federal preemption of the Act. It is important to note that this exemption provision would apply not only to Georgia state banks and savings

associations (and their subsidiaries), but also to state banks and savings associations (and their subsidiaries) chartered in other states. However, non-subsidiary affiliates of state banks and thrifts, such as mortgage lenders owned directly by the parent holding company, would not likely be entitled to this exemption.

The amended Act also gives the Department of Banking and Finance rulemaking authority, not inconsistent with law.

For More Information

To read the entire Act or the Department’s questions and answers regarding the Act, go to the GAFLA Resources Page of the Department’s website at:
<http://www.state.ga.us/dbf/GAFLAresources.html>

To learn how you can identify abusive mortgage lending practices and protect yourself from being a victim of such practices, please see the Department’s companion brochure titled **“Protect Yourself From Abusive Mortgage Lending Practices”**.

DISCLAIMER: This brochure is not an official interpretation of the Georgia Fair Lending Act. The information contained herein is for information purposes only and should not be construed as legal advice. For legal advice, consult an attorney.



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